

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

LUIS GONZÁLEZ-COLÓN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 09-2120 (JAF)

(Crim. No. 06-403)

OPINION AND ORDER

Petitioner brings this pro-se petition for relief from a federal court conviction pursuant to 28 U.S.C. § 2255. (Docket Nos. 1; 11.¹) Respondent opposes (Docket No. 8), and Petitioner does not reply.

I.

Factual and Procedural History

On September 18, 2007, Petitioner pleaded guilty to conspiring to possess, with intent to distribute, more than thirty-five but less than fifty grams of cocaine base. (Docket Nos. 1; 8.) In his plea agreement, Petitioner stipulated that no safety-valve provision would apply to his sentencing. (Crim. No. 06-403, Docket No. 390 at 5.) The plea agreement also stated that the parties to the agreement had not stipulated to any criminal history category, though they assumed a criminal history category III for the purposes of calculating sentencing. (*Id.* at 5 & n.2.) The presentence investigation report concluded that criminal history category II should apply. (*See* Docket Nos. 1 at 4; 8.) Petitioner challenged that conclusion, arguing that his should be category I (Crim. No. 06-403, Docket No. 391),

¹ Unless otherwise noted, all docket citations are to Civil No. 09-2120.

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1 but this court rejected that challenge at the sentencing hearing (Docket No. 8 at 3). On appeal,
2 Petitioner challenged the criminal history category assigned him. See United States v. González-Colón,
3 582 F.3d 124 (1st Cir. 2009). While the First Circuit ultimately determined that it would not hear
4 Petitioner's appeal, due to Petitioner's valid waiver of appeal, it discussed with approval Petitioner's
5 sentencing, noting that he had received a "windfall" at sentencing by ultimately having been sentenced
6 to fewer months than the minimum to which he stipulated in his plea agreement. See id. at 127 n.2;
7 128-29.

8 II.

9 Standard for Relief Under 28 U.S.C. § 2255

10 A federal district court has jurisdiction to entertain a § 2255 petition when the petitioner is in
11 custody under the sentence of a federal court. See 28 U.S.C. § 2255. A federal prisoner may challenge
12 his or her sentence on the ground that, inter alia, it "was imposed in violation of the Constitution or
13 laws of the United States." Id. The petitioner is entitled to an evidentiary hearing unless the
14 "allegations, accepted as true, would not entitle the petitioner to relief, or . . . 'are contradicted by the
15 record, inherently incredible, or conclusions rather than statements of fact.'" United States v.
16 Rodríguez Rodríguez, 929 F.2d 747, 749-50 (1st Cir. 1991) (quoting Dziurgot v. Luther, 897 F.2d 1222,
17 1225 (1st Cir. 1990)); see 28 U.S.C. § 2255(b).

18 III.

19 Analysis

20 Because Petitioner appears pro se, we construe his pleadings more favorably than we would
21 those drafted by an attorney. See Erickson v. Pardus, 551 U.S. 89, 94 (2007). Nevertheless,
22 Petitioner's pro se status does not excuse him from complying with procedural and substantive law.
23 Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997).

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1 reasonable jurist could find our assessment of Petitioner's constitutional claim debatable or wrong, and
2 we, therefore, deny him a COA. Petitioner may request a COA directly from the First Circuit, pursuant
3 to Rule of Appellate Procedure 22.

4 **V.**

5 **Conclusion**

6 For the foregoing reasons, we hereby **DENY** Petitioner's § 2255 motion (Docket Nos. 1; 11).
7 Pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings, we summarily **DISMISS** this
8 petition, because it is plain from the record that Petitioner is entitled to no relief. We **DENY** Petitioner
9 a COA.

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 28th day of July, 2010.

12 s/José Antonio Fusté
13 JOSE ANTONIO FUSTE
14 Chief U.S. District Judge

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